IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No.342 of 2001
(Old No. 1755 of 1986)

Smt. Sushila Devi D/o Fateh Singh,
R/o Village Tedna Patti,
Police Station Dhanpur, Distt. Pauri Garhwal
.....Appellant

Versus

The State
..... Respondent

Dated: June 12, 2007

Sri Rajeev Mohan, learned amicus curiae for the appellant
Sri Amit Bhatt, learned Addl. G.A. for the State/Respondent

HON. DHARAM VEER, J.

This appeal, preferred under Section 374(2) of Code of Criminal Procedure 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 08.05.1986 passed by Sessions Judge, Pauri Garhwal, in Sessions Trial No. 37 of 1985, State Vs. Ranjit Singh & Sushila Devi, whereby the learned Sessions Judge, Pauri Garhwal has convicted the present appellant Sushila Devi u/s 201 I.P.C. and awarded sentence for three years R.I. However, he has acquitted the accused/Ranjeet Singh u/s 302 r/w 201 I.P.C. and the appellant Sushila Devi u/s 302 r/w 34 I.P.C.

2. In brief, the prosecution story is this that on 7.7.1985 at 9:00 A.M., Bir Singh has lodged a F.I.R. (Ex.Ka-1) before Patti Patwari, area Chowki Tilri, Pauri Garhwal with the allegations that Sushila Devi had delivered an illegitimate child in the evening of 22.6.1985 and this child was born due to the illicit relationship of Sushila Devi with another co-accused Ranjeet Singh and the child has died on 6.7.1985 at 9:00 A.M. He had further stated in the F.I.R. that the child had died due to

the negligence of Smt. Sushila Devi and due to the wrong acts of Ranjit Singh. He had further stated that the body of the child was buried by the above said two persons. For that the reason, Beer Singh has lodged the FIR i.e. Ex.Ka-1. on the basis of this FIR, the child was recovered by the concerned Patwari on 7.7.1985 and inquest report Ex.Ka-2 was prepared. The Patwari Binti Lal also prepared site plan of the place of recovery of the dead body of this child i.e. Ex.Ka-3. After the preparation of inquest report, dead body of the child was sent to mortuary for post-mortem examination and the post-mortem of the body was conducted on 9.7.1985, that post-mortem report is Ex.Ka-8. Sushila Devi was also medically examined at Government Hospital, Rudraprayag on 7.7. 1985 and her medical report is Ex.Ka-7.

3. Later on, the investigation was transferred to another Patwari Sukhdev Singh on 20.7.1985. He has prepared a Chik Raport Ex.Ka-4 on 21.7.1985 on the basis of the FIR Ex.Ka-1. He has also prepared the site plan i.e. Ex.Ka-5. After recording the statement and completing the investigation, the Investigating officer Sukhdev Singh has submitted the charge sheet before the court i.e. EX.Ka-6.

4. Thereafter, the case was committed by Munsif Magistrate, Pauri Garhwal to the court of Sessions on 24.10.1985. After that, the learned Sessions Judge, Pauri Garhwal has framed the charge against the appellant u/s 302 r/w 34 I.P.C. and 201 I.P.C. The charge was explained to the appellants. Ranjit Singh pleaded not guilty and claimed to be tried. Appellant Sushila Devi had stated that she had conceived the child

from Ranjeet Singh and she was told by Ranjeet Singh on the morning of day of occurrence that the child should be killed but she did not agree. Her statement further is that on the same day on her return from the Jungle, where she had gone to collect grass, she found the child lying dead in her Gaushala and she, thereupon all alone buried the child in the forest (jungle) because Ranjeet Singh refused to accompany for the said purpose.

5. Thereafter, the prosecution examined as many as four witnesses in support of its case. P.W. 1 is Smt. Bindra Devi, P.W.2 is Bir Singh, the complainant, P.W.3 is Binti Lal, Patti Patwari area Patti Dhanpur-3 and Investigating Officer and P.W.4 is Sukhdev Singh who is also an Investigating Officer, Patwari Patti Dhanpur-3. (In rural hill areas of the Uttarakhand, the Patwaris are being vested with the police powers).

6. P.W. Smt. Bindra Devi was examined by the prosecution in support of its case who is the wife of Beer Singh, P.W.2, the complainant. She has not supported the prosecution case and was declared hostile. She has stated that she knows Ranjit Singh. He belongs to her village. Sushila Devi was deserted by her husband and she was living along with her mother in village Tuna. She also stated that before 4-5 years, her husband had deserted her and after that Sushila Devi had delivered a child in her mother's house and after 10-15 days of the birth of the child, the child had died. She has also stated that Sushila Devi never told her as to how the child had died and she does not know that from whom illicit relationship, Sushila Devi had given the birth to the child. She has also stated in the cross-examination that villagers used to hate her due to her illegitimate child.

She has also stated in her cross-examination that Sushila Devi had gone to bury her child all alone. This witness was declared hostile by the prosecution and she has not supported the prosecution story.

7. P.W.2 is the Beer Singh, who is the complainant of the case also. He has stated that Sushila Devi is his niece and the daughter of his brother Fateh Singh. He has also stated that she was married to some another village but she was living in the house of her mother since last 8-9 years. Her father has died before 7 years and after one month of birth of that child, the mother of Sushila Devi also died. Now she is living in her mother's house along with her younger brother. He also stated that Sushila Devi had an illicit relationship with accused Ranjit Singh and when he had asked from Sushila Devi about the child, then she had stated that the Ranjit Singh was the father of that child. The child was born on 22.6.1985 and the child had died on 7.7.1985. He has further stated that Goshala of Sushila Devi is adjacent to his Goshala. He has further stated that on the said date of 7.7.1985, when he came back in the evening at 4 o'clock to his house after completing his work, then his wife had told him that the child of Sushila Devi had died. Then he has enquired the matter from the neighbourers and after that, he has lodged the report. He has proved the report i.e. Ex.Ka-1. Then he had come to the village along with the Patwari and then the Patwari had enquired the matter from Sushila Devi. Then Sushila Devi had asked the Patwari that she had buried her child and on the next day, the dead body of the child was recovered on the pointing out of the Sushila Devi. Then the Panchayatnama was prepared and Sushila Devi was also medically examined on the same day. He has further

stated that when the child died, he and his wife had gone to see Sushila Devi and the other villagers have not visited the house of Sushila Devi to see her at all because the villagers were annoyed due to this illicit relationship of Sushila Devi and Ranjit Singh and for this reason, the villagers were not having any talking terms with the Sushila Devi. He has further stated that Sudhila Devi has not told anything to Patwari in his presence.

8. P.W.3 is the Binti Lal, Patti Patwari who has investigated the matter. He has stated in his statement that on 7.7.1985, he was posted as Patwari in Patti Dhanpur-3. He has received the written FIR Ex.Ka-1 from Bir Singh in the Chowki at 9:00 A.M. in the morning. On the basis of this report, he had started the investigation and he had reached Tuna village and from taking some people from the village along with Sushila Devi, he reached the spot where the dead body wa buried. He had recovered the dead body of the child and prepared the Panchayatnama i.e. Ex.Ka-2. He had also sealed the clothes of the dead body and dead body was taken to the Pauri Hospital and he had also prepared the site plan of the spot where the dead body was recovered, that was marked as Ex.Ka-3. Sushila Devi was also medically examined on the same date at Government Hospital, Rudraprayag. The genuineness of this medical report was admitted by the defence counsel and that report was marked as Ex.Ka-7. After that, he has recorded the statement of the witnesses and on 20.07.1985, the investigation was transferred to another Patwari of Dhanpur No. 3 Sukhdev Singh.

9. P.W. 4 is Sukhdev Singh, Patti Patwari Dhanpur-3, who has stated that on 20.7.1985, he was posted in Patti Patwari Dhanpur-3 and the investigation,

was transferred to him and he has prepared the Chik report on 21.7.1985. He has also proved the Chik Report i.e. ex.Ka-4. On 22.7.1985, he had prepared the site plan of the Goshala where the child was said to be born and that map is Ex.Ka-5. After that, he has recorded the statements of the witnesses and the accused was arrested by him on 13/14.8.1985 and he has submitted the charge sheet after completing the investigation on 17.9.1985 i.e. Ex.Ka-6. In cross-examination, he has stated that the child was born due to illicit relationship of Sushila Devi and Ranjit Singh.

10. After that the statement of the accused was recorded under section 313 of Cr.P.C. where Sushila Devi denied the allegations made against her and she hersef examined as D.W.1. In her statement, she has stated that her husband had deserted her 5-6 years back and since then she was living with her blind mother and younger brother and she is doing the business of selling the milk. She has also stated that Ranjit Singh had an illicit relationship with her in the forest and for that, she has become pregnant. She has stated that she had delivered the child in the month of Asar. She has also stated that she asked Ranjit Singh that she had delivered his child. After 6-7 days by leaving the child in the Goshala, she had gone to take the grass from the forest and when she came back at 10:00 a.m., she found that the child had died. She had asked the villagers that the Ranjit Singh had killed her child and she had also asked the villagers to got with her for burying of the child, but the villagers refused to got with her. Then the mother of Sushila Devi had asked Ranjit Singh to got with her for burying of child then Ranjit Singh had gone along with

Sushila Devi. She had stated in her cross-examination that Ranjit Singh was her uncle in relation.

11. After appreciating all the evidence and considering all the facts and circumstances of the case, the learned Sessions Judge, Pauri Garhwal vide his judgment and order dated 8.5.1986 has acquitted the accused/Ranjeet Singh u/s 302 r/w 201 I.P.C. and present appellant Smt. Sushila devi u/s 302 r/w 34 I.P.C. However, the learned Sessions Judge has convicted the present appellant u/s 201 I.P.C. and awarded sentence of 3 years R.I. Feeling aggrieved by the said judgment and order dated 8.5.1986, the appellant Smt. Sushila Devi has come up in appeal before this Court.

12. I have heard Sri Rajeev Mohan, learned amicus curiae for the appellant and Sri Amit Bhatt, learned Addl. G.A. for the State and perused the entire record.

13. From the above said evidence and entire record, it is clear that P.W.1 Smt. Bindra Devi had not supported the prosecution case and she was declared hostile. P.W.2 Sri Bee Singh had also stated in his cross-examination that (गॉव वाले इनके नाजायज सम्बन्धों को गलत मानते थे इसलिये इनसे बो चाल बन्द थी। इसीलिये मैं भी इनसे बात – चीत नहीं करता था।) The villagers were thinking bad about the illicit relationship of the accused persons and for this reason, the villagers had not talking terms with them and hence Beer Singh was also not having the talking terms with these accused persons. P.W3 is the Binti Lal, Investigating Officer and P.W. 4 is Sukhdev Singh who is also the Investigating Officer. D.W. 1 Sushila Devi was also examined herself. She had specifically stated in her statement that she had asked the villagers to got with her

for burying of the child but the villagers had refused to go with her. Then her mother asked Ranjit Singh to go with Sushila Devi and then Ranjit Singh had gone along with the Sushila devi for burying of the child (मैने तभी गॉव के लोगो से कहा कि रणजीत सिंह ने बच्चा मार दिया है उसने मैने बच्चो को दफन करने को कहा तो उन लोगो ने मना कर दिया । फिर मेरी मॉ ने रणजीत सिंह से दफन करने को कहा और फिर मैं रणजीत सिंह के साथ बच्चे को दफन करने गई।).

14. From the statements of the witnesses mentioned above, it is clear that the offence u/s 302 r/w 34 I.P.C. is not proved against the appellant and the learned Sessions Judge, Pauri Garhwal has rightly acquitted the appellant for an offence punishable u/s 302 r/w 34 I.P.C. and the co-accused Ranjit Singh was also rightly acquitted for an offence punishable u/s 302 r/w 201 I.P.C. Section 201 of I.P.C. is relevant to mention here which reads as under:-

> *201.**Causing disappearance of evidence of offence, or giving false information to screen offender**- whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;*
>
> ***if a capital offence.**-shall if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*
>
> *if punishable with imprisonment for life- and if the offence is punishable with [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*
>
> ***if punishable with less than ten years' imprisonment**- and if the offence is punishable with*

imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

15. From the above said evidence discussed above, it is clear that when Sushila Devi had come from the forest after taking the grass for the cows in her Gowshala, then she found that her child had died. Then she asked the villagers and Ranjit Singh to go with her to bury the child but the villagers had refused to go with her and Ranjit Singh had gone with her on the request of her mother. It is also clear from the above said evidence that Sushila Devi has not buries the dead body of the child after concealing and she had not tried to conceal any crime and she had buried the child because after the death, it was natural and compulsory to bury the child and when the villages had refused, then she had gone to bury the child along with Ranjit Singh and as the learned Sessions Judge, Rauri Garhwal has acquitted the appellant u/s 302 r/w 34 I.P.C. and the co-accused was also acquitted u/s 32 r/w 201 I.P.C., the offence u/s 201 I.P.C. is also not proved against the appellant Smt. Sushila Devi Beyond reasonable doubt.

16. For the reasons recorded above, the appeal is allowed. The judgment and order dated 8.5.1986 passed by Sessions Judge, Parui Garhwal is set aside and the conviction made under Section 201 I.P.C. and sentence for three years R.I. against the appellant Sushila Devi is hereby set aside.

(Dharam Veer, J.)

June 12, 2007
Rajeev Dang